



OFFICE OF THE
INFORMATION & PRIVACY
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Keynote Presentation to
MEDIA DEMOCRACY DAYS
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Thank you so much. It's great to be here. Not only am I a movie buff... but I'm a huge privacy nerd. Speaking at a documentary screening about digital privacy issues is a great way to spend a Friday night. Thanks to Simon Fraser University and the organizers of Media Democracy Days for letting me be a part of it.

If I had a dollar for every reporter who asked me, "does privacy matter in the digital age?!" The number of you here tonight—that's a powerful statement about the value we put on these rights. So thank you for making the time to be here, to see the film and be a part of the conversation.

Because we're here for Media Democracy Days, I'd like to talk about why preserving access to information and privacy rights are so important in our democracy, for freedom of opinion and for open societies.

I also want to talk about the ongoing surveillance issues in the news – why these stories are of concern to privacy commissioners and to advocates, and what I think needs to happen to bring a little democracy to the conversation.

But first, I'd like to go back to basics and talk about access to information and personal privacy and how they make our democracy work. While this might seem like an obvious point, I think it's worthwhile to note the connections and underline why these rights are so important.

Let's start with access rights. Some people call it freedom of information or more simply, the right to know. When you listen carefully to the conversations about access rights over the past 20 years, often we hear individuals, journalists and civil society groups talking about two things: transparency and accountability.

Shine a light on the workings of government, through access to records, and hold decision makers to account for their actions—sunlight being the best disinfectant. That's a very important part of access rights. More recently, something new and interesting is happening in the access to information world. The tent is getting bigger.

We have new actors at the table promoting open information and open data. These open data advocates are broadening the conversation and bringing a new set of ideas and imperatives to the freedom of information game. Open data advocates promote the view that id government data is public data and should be made public by default.

Systems should be designed, with this kind of access in mind—data available in open format, published for general use, to combine with other data for community research and planning, for commerce and to promote an informed citizenry.

What traditional FOI users and open data advocates have in common is the idea that citizens must have access to information in order to take part in policy making and public debate. By the way, governments have a stake in this too. The flow of information from government to citizens can be an important way for them gain legitimacy for their decisions and actions – assuming they are built on a sound foundation of research, consultation, and are seen to be in the public interest.

What about on a bad day, when a scandal engulfs a government or a Premier? There's usually an access to information angle to that story too. When you look back at the biggest scandals in BC politics over the last 20 years, each has some sort of connection to FOI. And often it's not the substance of the issue, but the perception of government secrecy that dominates the news.

So access rights are an important underpinning of our democratic system. And it's absolutely essential that these rights are legislated, and overseen by an independent agency and continue to be strengthened in law. We can't rely on the goodwill of

successive governments to make this stuff available – and it is too important to leave to chance.

What about privacy? In BC and Canada, we have umbrella privacy laws governing the public and private sector. Unlike the United States which has a patchwork approach to privacy enforcement, Canadians enjoy universal privacy rights that are enforced by independent regulators or Commissioners like me.

Unfortunately many people that I have spoken to over the years value their privacy only when they've lost it—be it identity theft, a data breach, or just a sense that creepy technologies know just a little bit too much about us.

But privacy is more than a feeling of discomfort when we have been wronged, or when we feel someone has encroached upon our personal space. Privacy is an essential precursor to healthy democratic debate. Privacy is at the heart of our constitutional rights. Freedom of association, freedom of expression could not exist without privacy.

Implicit in the concept of privacy is the idea that as individuals, we can be trusted to engage in independent thought and reasoning, to consider the issues and form our own opinions, then bring those views to the public square for discussion and debate.

This is why privacy matters. Not because it's an idea that should be valued in and of itself, but because it is a precursor for all of these important things we need to do as engaged citizens.

Of course, there are other inputs to a strong democracy—but access and privacy rights must be at the foundation if it is going to work. In new and emerging democracies, where so many different legal structures have to be implemented—ethics laws, election financing limits, conflict of interest laws, lobbyist registration—where do you start? You start with transparency and individual autonomy of citizens. Without transparency of government operations the right to know and the right to privacy and personal autonomy, a state will struggle to realize its democratic potential.

Increasingly, the line between what we have considered “access issues” and “privacy issues” has become very fuzzy. Last month, my office hosted a conference in downtown Vancouver that encompassed both privacy and access to information issues. Throughout the conference, we found ourselves talking less and less about access and privacy as separate silos, and more about the issues we're collectively facing—today and in the future.

One of the more popular sessions on the first day of the conference was called The Future of Surveillance. We had academics, civil society groups, government and others talking about how the face of surveillance is changing.

Ten years ago, when we talked about surveillance, it was in the context of video cameras and CCTV. Today, it is informational surveillance—the digital crumbs about

our on-line activities, internet search history, information about our telephone calls, location, email communications and file transfers can be collected, stored, analyzed and retained over time, which keeps many of us up at night.

What fascinates me about this conversation about surveillance is that it is just as much about access as it was about privacy. Why? Because while the full scope of state surveillance—from the National Security Agency in the US, to Canada's equivalent, CSEC, the Communications Security Establishment Canada—is not yet clear, what is certain is that the public is hungry for information. We simply don't have enough information about these programs.

Let me be clear. There are legitimate circumstances in which secret surveillance and intelligence gathering is necessary for national security. The problem is that nobody knows the scope of these programs, the extent to which secret surveillance is taking place, who is being monitored and under what conditions. The antidote is transparency. Shine a light on these programs. Let's have a debate about what we as a society are prepared to accept—and what we are not prepared to accept—when it comes to national security and surveillance programs.

This is precisely the debate Edward Snowden was hoping to ignite when he made the decision to blow the whistle on the NSA. Whether you think his actions are heroic or treasonous (and public opinion is divided on that issue) there is no question Snowden is a galvanizing figure. And through his actions Snowden has put privacy, transparency and the need for democratic debate front and center. The stream of disclosures by the Guardian has opened up the most extended debate on the NSA since its creation in 1952.

Here at home, I've been impressed with the action of civil society groups on this issue. Organizations like Open Media and the BC Civil Liberties Association are emerging as leaders and key mobilizers on this issue in BC. Some of you may know that open media recently launched a "protect our privacy coalition," with citizen, academic industry and organizational partners. And the BCCLA recently initiated a lawsuit against CSEC, claiming its reported surveillance is unconstitutional. In the absence of sufficient detail as to how Canadian surveillance programs are actually operating and effectiveness of checks and balances, this action is an important to drive calls for transparency and public debate.

I will say, however, that I am somewhat concerned about the potential for complacency of the average Canadian on this. South of the border, the Stop Watching Us coalition – made up of more than 100 civil society groups and companies from across the United States including the ACLU, the Electronic Frontier Foundation, Mozilla and EPIC – recently drew a crowd of thousands to Washington DC as they delivered petitions to Congress against online spying.

Civil society and political scrutiny has ignited a review of US domestic and foreign intelligence collection, questions about violations of privacy and about what this means

for America's relations with other nations around the world. Other questions arising from the Snowden revelations are more economic in nature—what does this mean for non-US citizens who rely on American companies for internet and email services—do they have privacy protections for from the NSA? What about the efforts to weaken or crack encryption? Does that make the internet less secure for everyone?

But here at home we don't have an equivalent Edward Snowden to publish details of these programs in Canada. Very little is actually known about how intelligence and national security programs have been working—which means these types of questions about the economic, social and political impact of mass surveillance may not be top-of-mind like they are in the US and in Europe.

I was in France when the first guardian article was published. The public response was palpable. The story was all over the international newspapers, on television, in the cafes and on the street corners. Everybody was talking about it, and with each passing day and new development, interest intensified. When I returned to Canada, I was surprised to see that the story had not reached that same level of interest and engagement.

The Canadian aspects to this story cannot and should not be ignored. I am heartened to see Canadian civil society groups and parliamentarians leading this issue, and I am hopeful that with this leadership, Canadians will take up the charge. Of course, privacy regulators are very much aware of this issue.

My colleague, Jennifer Stoddart, Privacy Commissioner of Canada, has been consulting with the CSEC Commissioner to determine how the personal information of Canadians may be affected by these programs. Like many British Columbians, I am concerned about the prospect of bulk collection of our communications data, and the implications of these activities on our privacy rights. This is a particular concern when data is spilling across all platforms and across national borders.

In my view, the solution to this problem is a collective one, and a civic one. We must politicize this issue if we want to further the agenda for transparency and oversight. And we need open debate, a parliamentary debate, about what is happening here in Canada, to get this conversation started.

My office and other Privacy Commissioners across Canada continue to closely watch this issue, and do what we can to promote transparency, parliamentary and public debate.

In closing I'd like to encourage all of you to be aware, be vigilant, and continue to engage in this important issue. It is the opinions and actions of the average Canadian that will mobilize Parliament to act on this issue.

Thank you for your attention. I am happy to answer any questions you have.